

ESTTA Tracking number: **ESTTA727074**

Filing date: **02/15/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224781
Party	Defendant BirdieBox, LLC
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Submission	Other Motions/Papers
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Date	02/15/2016
Attachments	BirdieBox - M-Lift Default - 2-15-16.pdf(19756 bytes )

BIRCHBOX, INC.,	)	Opposition No. 91224781
Opposer,	)	Mark: BIRDIEBOX
v.	)	
BIRDIEBOX, LLC	)	
Applicant.	)	

**COMES NOW**, undersigned counsel, Douglas I. Wall, Esquire of the law firm of Quintairos, Prieto, Wood & Boyer P.A., who does hereby respectfully requests that the default against Applicant, BIRDIEBOX, LLC, be lifted in this matter for the foregoing reasons:

1. On January 21, 2016, a Default was entered by the TTAB as to Applicant BIRDIEBOX.
2. In the Default, Applicant was provided 30 days to show cause why the Default should be lifted, pursuant to Fed. R. Civ. P. 55(b)(2).
3. This document is the Applicant BIRDIEBOX's request/"show cause" so as to lift the Default as to the Applicant BIRDIEBOX in this matter.
4. On January 13, 2016, undersigned counsel for Applicant files his Notice of Appearance on behalf of BIRDIEBOX.
5. In advance of filing his Notice of Appearance, undersigned counsel contacted the Trademark Trial and Appeal Board ("TTAB") and interlocutory counsel to ascertain the most efficient course of action with regards to this pending opposition in

conjunction with a previously filed Opposition involving the same parties, to wit: BIRCHBOX, INC. v. BIRDIEBOX, LLC, Opposition number 91216943.

6. During discussions with interlocutory counsel, undersigned counsel was advised a more prudent course of conduct would be to either Stay this pending Opposition so as to allow the prior Opposition to resolve or to alternatively consolidate both Oppositions into the prior Opposition.

7. Undersigned counsel was requested to contact counsel for Opposer to determine the desired course of conduct with regard to this Opposition.

8. Undersigned counsel entered his Notice of Appearance, and in conjunction with forwarding a courtesy copy of same to counsel for Opposer, inquired as directed.

9. At that point, the parties re-engaged settlement discussions (which are still ongoing), in conjunction with coordination of depositions for Applicant BIRDIEBOX's Corporate Representatives.

10. These coordination efforts and discussions as to future handling were ongoing when the default was entered in this matter.

11. Undersigned counsel recognizes an Answer or response of some type (motion to stay, motion to consolidate, etcetera) should have been entered during the pendency of his discussions with Opposer's counsel; however, in light of the request for clarification as to staying or consolidation, undersigned counsel was awaiting clarification from Opposer counsel before proceeding.

12. Given both Oppositions in this matter (Word Mark Opposition of BIRDIEBOX and this Logo Mark Opposition) involve the same relevant marks, same

issues, same operative facts and other items common between both Opposition, there is no prejudice in lifting the Stay in this matter so as to allow counsel to file an Answer, or other suitable response (i.e. Motion to Consolidate or Motion to Stay).

13. Counsel for Opposer does not take any position, neither opposing nor supporting this Motion to lifting of the Default in this matter.

WHEREFORE, and for all of the reasons above, undersigned counsel for Applicant respectfully requests that the Default be lifted in this matter with leave given for a response to be entered including but not limited to an Answer, Motion to Stay and/or Motion to Consolidate.

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of February 2016, I filed the foregoing with the Trademark Trial and Appeal Board and further caused a copy of the foregoing Notice of Appearance to be served by email and by First Class Mail on Counsel for the Opposer: Rob Litowitz ([Rob.Litowitz@kelly-ip.com](mailto:Rob.Litowitz@kelly-ip.com)); Kelly IP, LLP, 1919 M Street, N.W., Suite 610, Washington, DC 20036; *Attorney for Opposer Birchbox, Inc.*

Respectfully submitted,

***QUINTAIROS, PRIETO WOOD & BOYER, P.A.***

**s/Douglas I. Wall, Esquire/**  
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